

SERVED : February 4, 1994

NTSB Order No. EA-4077

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 2nd day of February, 1994

RICHARD A. RUGGIERO,

Petitioner,

v.

Docket CD-28

DAVID R. HINSON,
Administrator,
Federal Aviation Administration,)

Respondent.

OPINION AND ORDER

The petitioner has appealed from an order Administrative Law Judge William E. Fowler, Jr. issued in this proceeding on August 27, 1993, granting the Administrator's motion for dismissal on the ground that the petitioner had not timely filed a petition for review of the Administrator's denials of his applications for

an aircraft type rating.¹ We will grant the appeal and remand the matter to the law judge for a hearing.²

The petitioner did not file a petition with the Board within 60 days after the December 8 and 18, 1992 denials of his type rating applications.³ However, he did within 60 days file with us a petition for review of the Administrator's subsequent rejection of a written complaint he had made concerning the denials.⁴ In his reply brief, the Administrator, asserting that the petitioner's complaint "can fairly be construed as a request for reconsideration" of the denials, has abandoned the view that the petitioner was late in filing his petition and has joined in the petitioner's request for a remand.

We agree with the Administrator that the complaint over the denials can be broadly read to reflect an effort or intent by the

¹A copy of the law judge's decision is attached.

²Since the petitioner has not yet had a hearing on his challenge to the Administrator's denials of his applications, in December 1992, for a Saab 340B type rating and his appeal to us from that action does not operate to postpone the impact of the denials, we are persuaded that his appeal should be decided before other pending matters in which evidentiary hearings have been held and any certificate action upheld in them has been stayed. Consequently, we hereby grant his unopposed motion for expedited consideration.

³Section 821.24(a) of the Board's rules of practice provides that an applicant denied the issuance or renewal of an airman certificate by the Administrator may petition the Board for review "within 60 days from the time of service on the petitioner of the Administrator's action."

⁴The formal complaint concerning the flight tests that resulted in denials was sent to the Administrator on January 27, 1993, and the response to it was served on the petitioner on June 9, 1993. The petition for review was filed on August 7.

petitioner to have his performance on the flight tests re-evaluated in light of his objections to the manner 'in which the tests were conducted and, consequently, that his time for filing a petition for review did not start to run until that complaint was resolved. Since the petitioner did file his petition within 60 days after the Administrator communicated advice to the effect that the denials would stand, the law judge's decision that the petition was untimely will be reversed.⁵

ACCORDINGLY, IT IS ORDERED THAT:

1. The law judge's August 27, 1993 "Order Granting Administrator's Motion to Dismiss and Terminating Proceeding" is reversed, and
2. The case is remanded to the law judge.

VOGT , Chairman, COUGHLIN, Vice Chairman, LAUBER, HAMMERSCHMIDT , and HALL, Members of the Board, concurred in the above opinion and order.

⁵Although the petitioner filed a timely answer to the Administrator's motion to dismiss, the law judge granted the motion before the time for responding to it had expired and before petitioner's answer had in fact been received. No reason appears in the record for the law judge's precipitous ruling.